

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(July 20, 1998)

FILED
October 12, 1998
Cecil W. Crowson
Appellate Court Clerk

WILLIE GOOCH,)	DAVIDSON CHANCERY
)	
Plaintiff-Appellant)	
)	
v.)	Hon. Ellen Hobbs Lyle,
)	Chancellor
McKINNON BRIDGE COMPANY,)	
)	No. 01S01-9708-CH-00169
Defendant-Appellee)	

For Appellant:

Michael L. Weinman
Tatum, Tatum & Weinman
Henderson, Tennessee

For Appellee:

James H. Tucker, Jr.
Manier & Herod
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Ben Cantrell, Special Justice
William H. Inman, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e) for hearing and reporting of findings of fact and conclusions of law. The issue on appeal is whether the denial of the employee's motion to set aside the workers' compensation settlement was an abuse of discretion. As discussed below, the panel has concluded the trial court did not err and that the trial court's action should be affirmed.

The employee, Mr. Willie Gooch, a manual laborer, injured both hands on March 14, 1995 during the course and within the scope of his employment for McKinnon Bridge Company. Dr. Fred Torstrick had assigned the following impairment ratings: eight percent to the left index finger, twenty-nine percent to the left long finger, twenty-nine percent to the left ring finger, twelve percent to the left small finger, fifteen percent to the right index finger, fifteen percent to the right long finger, and twelve percent to the right ring finger.

Mr. Todd Smith, a representative for the insurance adjusting agency, advised Mr. Gooch of the treating physician's disability ratings and offered him a settlement based on those ratings. However, the settlement eliminated any future medical benefits for the injury. Mr. Smith, admittedly, did not read the documents to Mr. Gooch, who cannot read and can barely write his name. The settlement proposed a lump sum payment in the sum of \$11,962.19, in addition to medical expenses already paid totaling \$2,766.01.

Mr. James Tucker, attorney for McKinnon Bridge Company, testified that he personally called Mr. Gooch and explained the settlement, including the omission of any future medical expenses and the settlement's finality. Mr. Tucker and Mr. Gooch met and went over the prepared documents, which Mr. Gooch then signed. Mr. Tucker testified that he did not read the documents to Mr. Gooch verbatim but that he did cover the substance of the material portions in question.

On October 31, 1996, McKinnon Bridge Company and the injured employee filed a Petition for Approval of Final Settlement in the Chancery Court of Davidson County. Mr. Gooch was not represented by counsel. A hearing was held that same day. The chancellor repeatedly told Mr. Gooch he would likely receive more money if he took his case to trial. The chancellor further informed Mr. Gooch that he certainly would be awarded future medical benefits if taken to trial. Moreover, the chancellor advised Mr. Gooch that he was entitled to hire an attorney.

Despite the information provided by the insurance adjuster, the defendant's attorney, as well as the chancellor, Mr. Gooch still expressed a desire to settle the matter. Thus, the chancellor entered an Order Approving the Settlement, after finding the settlement to be in the employee's best interest.

On his drive home from the courthouse, Mr. Gooch concluded he had made a mistake. He hired an attorney, who, on November 8, 1996, filed a timely Motion to Set Aside The Order Approving the Workers' Compensation Settlement, grounded on his lack of sophistication and illiteracy, and that he had changed his mind after considering what he had been told by the judge and

representatives of the employer, as reflected by affidavits from Mr. Gooch and his wife. After a hearing, the chancellor filed exhaustive findings and conclusions disallowing the motion and reiterating her earlier finding that the settlement was in the employee's best interest. We find in the record no evidence the employee retains a greater disability than that for which he has been compensated.

Although claims under the workers' compensation law may be settled between or among the interested parties, such settlements are not binding on either party unless reduced to writing and approved by the judge of a circuit, chancery or criminal court of the county where the claim for compensation is entitled to be made. Tenn. Code Ann. section 50-6-206. An agreement which lacks such approval is not binding on either party. Gross v. National Health Enterprises, Inc., 582 S.W.2d 379 (Tenn. 1979). The cost of the proceeding is borne by the employer, who must also forward certified copies of the settlement papers to the division of workers' compensation of the department of labor within ten days after entry of judgment. Within thirty (30) days after receipt of such papers by the division of workers' compensation, the approving trial judge may, in the exercise of discretion, vacate the settlement upon the application of the employee or the superintendent of the division of workers' compensation in his behalf, if it is made to appear that the settlement failed to secure to the injured employee, in a substantial manner, the benefits provided by law. Tenn. Code Ann. section 50-6-206.

By entering into lump sum settlements, both parties run a risk of injury. The employee runs the risk that his disability may increase in the future and the employer runs the risk that the disability of the employee may decrease in the future, but both parties are bound and foreclosed by the entry of a valid judgment approving a lump sum settlement. Corby v. Matthews, 541 S.W.2d 789 (Tenn. 1976).

Under the circumstances of this case, where the chancellor has found, after a careful examination of the facts, that the settlement was in the best interest of the employee, we cannot say she abused her discretion in refusing to vacate it. The judgment of the trial court is affirmed. Costs on appeal are taxed to plaintiff-appellant.

Joe C. Loser, Jr., Special Judge

CONCUR:

Ben H. Cantrell, Special Justice

William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

WILLIE GOOCH,
Plaintiff/Appellant
vs.
McKINNON BRIDGE COMPANY
Defendant/Appellee

} DAVIDSON CHANCERY
} No. 96-3428-III Below
} Hon. Ellen Hobbs Lyle
} Chancellor
} No. 01S01-9708-CH-00169
} AFFIRMED

FILED
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Appellate Court Clerk

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on October 12, 1998.

PER CURIAM